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11 **UNITED STATES DISTRICT COURT**
12 **CENTRAL DISTRICT OF CALIFORNIA**
13 **WESTERN DIVISION**

14 BEACHBODY, LLC, a Delaware
15 Limited Liability Company,

16 Plaintiff,

17 v.

18 JADEE INVESTMENTS
CORPORATION, a Hawaii Corporation;
19 WILLIAM LEE, an Individual; KAYO
CLEVELAND, an Individual; and DOES
20 1-10, Inclusive,

21 Defendants.
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Case No.: 2:17-cv-02067

COMPLAINT FOR DAMAGES:

- (1) **FEDERAL TRADEMARK INFRINGEMENT** [15 U.S.C. § 1114/Lanham Act §32(a)];
- (2) **FEDERAL COPYRIGHT INFRINGEMENT** [17 U.S.C. §501(a)];
- (3) **FALSE DESIGNATION OF ORIGIN/UNFAIR COMPETITION** [15 U.S.C. §1125(a)/Lanham Act §43(a)];
- (4) **TRADEMARK DILUTION** [15 U.S.C. §1125(c)]; and
- (5) **UNFAIR BUSINESS PRACTICES** [CALIFORNIA BUSINESS & PROFESSIONS CODE §17200].

[DEMAND FOR JURY TRIAL]

1 COMES NOW, Plaintiff Beachbody, LLC (“Plaintiff”) to hereby file its
2 Complaint for Damages against Defendants Jadee Investments Corporation,
3 William Lee, Kayo Cleveland, and Does 1-10, inclusive (collectively
4 “Defendants”).

5 **PARTIES**

6 1. Plaintiff is now, and was at the time of the filing of this Complaint
7 and at all intervening times, a Delaware Limited Liability Company, duly
8 authorized and licensed to conduct business in California, with its principal place
9 of business located in Santa Monica, California.

10 2. Plaintiff is informed and believes that Defendant Jadee Investments
11 Corporation is now, and was at the time of the filing of this Complaint and at all
12 intervening times, an active Hawaii corporation formerly known as L & N
13 Investment Corporation with its principal place of business located in Anniston,
14 Alabama.

15 3. Plaintiff is informed and believes that Defendant William Lee is now,
16 and was at the time of the filing of this Complaint and at all intervening times, an
17 individual residing in Anniston, Alabama and an officer of Jadee Investments
18 Corporation.

19 4. Plaintiff is informed and believes that Defendant Kayo Cleveland is
20 now, and was at the time of the filing of this Complaint and at all intervening
21 times, an individual residing in Selma, Alabama and an officer of Jadee
22 Investments Corporation.

23 5. Plaintiff is informed and believes that Defendants Jadee Investments
24 Corporation, William Lee, Kayo Cleveland, and Does 1-10, inclusive, sued herein
25 by fictitious names are jointly, severally and concurrently liable and responsible
26 with the named Defendants upon the causes of action hereinafter set forth.

27 6. Plaintiff is informed and believes and thereon alleges that at all times
28 mentioned herein Defendants Jadee Investments Corporation, William Lee, Kayo

1 Cleveland, and Does 1-10, inclusive, and each of them, were the agents, servants
2 and employees of every other defendant and the acts of each defendant, as alleged
3 herein, were performed within the course and scope of that agency, service or
4 employment.

5 7. The true names and capacities, whether individual, corporate,
6 associate or otherwise, of defendants herein named as Does 1-10, inclusive, are
7 unknown to Plaintiff. Plaintiff therefore sues said defendants by such fictitious
8 names. When the true names and capacities of said defendants have been
9 ascertained, Plaintiff will amend this pleading accordingly.

10 **JURISDICTIONAL ALLEGATIONS**

11 8. This Court has subject matter jurisdiction over this matter pursuant to
12 28 U.S.C. §§1331 and 1338(a) and (b), in that the case arises out of claims for
13 trademark infringement, false designation of origin, unfair competition and dilution
14 under the Lanham Act (15 U.S.C. §1051 *et seq.*), and copyright infringement under
15 17 U.S.C. §501(a); and this Court has supplemental jurisdiction pursuant to 28
16 U.S.C. §§1367(a) and 1338 (a)(b).

17 9. Venue is proper, *inter alia*, pursuant to 28 U.S.C. §1391(b) because
18 on information and belief, a substantial part of the events or omissions giving rise
19 to the claim occurred in this judicial district, and has caused damages to Plaintiff in
20 this district.

21 10. Personal jurisdiction exists over Defendants because on information
22 and belief, Defendants conduct business within the State of California and within
23 this judicial district, have purposefully directed action to California and this district,
24 or have otherwise availed themselves of the privileges and protections of the laws
25 of the State of California, such that this Court's assertion of jurisdiction over
26 Defendants does not offend traditional notions of fair play and due process.

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GENERAL ALLEGATIONS

Plaintiff and its Famous BEACHBODY® Fitness Products and Services

11. Plaintiff is a health, wellness and fitness company involved in, among other things, the development, production, sale, and distribution of in-home fitness, weight loss, and health products and services.

12. One of the main components of Plaintiff's business encompasses the production, sale and distribution of its famous BEACHBODY® family of fitness DVDs and kits, including its P90X®, TURBO JAM®, HIP HOP ABS®, INSANITY®, BRAZIL BUTT LIFT®, P90X2®, BODY BEAST®, FOCUS T25®, P90X3® and 22 MINUTE HARD CORPS® fitness DVDs and kits. Plaintiff's BEACHBODY®, P90X®, TURBO JAM®, HIP HOP ABS®, INSANITY®, BRAZIL BUTT LIFT®, P90X2®, BODY BEAST®, FOCUS T25®, P90X3® and 22 MINUTE HARD CORPS®-branded products and services have achieved great success since their introduction in 1999, 2003, 2005, 2007, 2009, 2011, 2012, 2013 and 2016, respectively.

13. The success of Plaintiff's BEACHBODY, P90X, TURBO JAM, HIP HOP ABS, INSANITY, BRAZIL BUTT LIFT, P90X2, BODY BEAST, FOCUS T25, P90X3 and 22 MINUTE HARD CORPS products and services is due in part to Plaintiff's marketing and promotional efforts. These efforts include advertising and promotion through Plaintiff's websites, print and other internet-based advertising, in-person and televised promotional appearances by its trainers, and its infomercials, among other efforts. Plaintiff has spent substantial time, money and effort in building up and developing consumer recognition, awareness and goodwill in its BEACHBODY, P90X, TURBO JAM, HIP HOP ABS, INSANITY, BRAZIL BUTT LIFT, P90X2, BODY BEAST, FOCUS T25, P90X3 and 22 MINUTE HARD CORPS products, services and marks. For example, Plaintiff has spent close to one hundred million dollars (\$100,000,000.00) to air its television infomercials in each of 2009, 2010, 2011, 2012, 2013, 2014, 2015 and 2016. On

each P90X, TURBO JAM, HIP HOP ABS, INSANITY, BRAZIL BUTT LIFT, P90X2, BODY BEAST, FOCUS T25, P90X3 and 22 MINUTE HARD CORPS exercise kit, in each infomercial, and in each piece of marketing material for P90X, TURBO JAM, HIP HOP ABS, INSANITY, BRAZIL BUTT LIFT, P90X2, BODY BEAST, FOCUS T25, P90X3 and 22 MINUTE HARD CORPS products, the BEACHBODY marks are prominently displayed along with the P90X, TURBO JAM, HIP HOP ABS, INSANITY, BRAZIL BUTT LIFT, P90X2, BODY BEAST, FOCUS T25, P90X3 and 22 MINUTE HARD CORPS (on the P90X, TURBO JAM, HIP HOP ABS, INSANITY, BRAZIL BUTT LIFT, P90X2, BODY BEAST, FOCUS T25, P90X3 and 22 MINUTE HARD CORPS products) marks.

14. The success of the P90X, TURBO JAM, HIP HOP ABS, INSANITY, BRAZIL BUTT LIFT, P90X2, BODY BEAST, FOCUS T25, P90X3 and 22 MINUTE HARD CORPS DVDs, kits and other products and services is not due to Plaintiff's promotional efforts alone. Rather, the popularity of P90X, TURBO JAM, HIP HOP ABS, INSANITY, BRAZIL BUTT LIFT, P90X2, BODY BEAST, FOCUS T25, P90X3 and 22 MINUTE HARD CORPS is also due to Plaintiff's consumers, and the word of mouth buzz consumers have generated. Success stories of countless individuals who have utilized P90X, TURBO JAM, HIP HOP ABS, INSANITY, BRAZIL BUTT LIFT, P90X2, BODY BEAST, FOCUS T25, P90X3 and 22 MINUTE HARD CORPS to help achieve their respective fitness goals are far too numerous to recount, but include stories from all types of people ranging from your average men and women in almost all age groups, to well-trained professional athletes and celebrities looking to stay fit and in shape. In fact, a wide array of newspapers, magazines and television networks has featured stories in which prominent celebrities and professional athletes have enthusiastically described their experience and success with the P90X, TURBO JAM, HIP HOP ABS, INSANITY, BRAZIL BUTT LIFT, P90X2, BODY BEAST, FOCUS T25, P90X3 and 22 MINUTE HARD CORPS kits.

1 15. As a result of Plaintiff's efforts, the quality of Plaintiff's products, and
 2 the promotion and word of mouth buzz, the BEACHBODY®, P90X3®, and
 3 PIYO® DVDs, products, and services have been prominently placed in the minds
 4 of the public. Consumers, purchasers and the members of the public have become
 5 familiar with the Plaintiff's fitness DVDs and other products and services, and
 6 have come to recognize the BEACHBODY®, P90X®, TURBO JAM®, HIP HOP
 7 ABS®, INSANITY®, BRAZIL BUTT LIFT®, P90X2®, BODY BEAST®,
 8 FOCUS T25®, P90X3® and 22 MINUTE HARD CORPS® marks, products and
 9 services and associate them exclusively with Plaintiff – Plaintiff has acquired a
 10 valuable reputation and goodwill among the public as a result of such association.
 11 Indeed, the BEACHBODY, P90X, TURBO JAM, HIP HOP ABS, INSANITY,
 12 BRAZIL BUTT LIFT, P90X2, BODY BEAST, FOCUS T25, P90X3 and 22
 13 MINUTE HARD CORPS marks are famous in the United States.

14 16. In addition to the above, Plaintiff also owns or otherwise controls
 15 copyrights in and related to the P90X, TURBO JAM, HIP HOP ABS, INSANITY,
 16 BRAZIL BUTT LIFT, P90X2, BODY BEAST, FOCUS T25, P90X3 and 22
 17 MINUTE HARD CORPS exercise kits. Plaintiff's rights protect the entirety of
 18 each kit as well as the many works therein.

19 17. While Plaintiff has gained significant common law trademark and
 20 other rights in its BEACHBODY, P90X, TURBO JAM, HIP HOP ABS,
 21 INSANITY, BRAZIL BUTT LIFT, P90X2, BODY BEAST, FOCUS T25, P90X3
 22 and 22 MINUTE HARD CORPS products and services through its use, advertising
 23 and promotion, Plaintiff has also protected its valuable rights by filing for and
 24 obtaining federal trademark and copyright registrations.

25 18. Plaintiff owns the following United States Patent and Trademark
 26 Office ("U.S.P.T.O.") registrations for the "BEACH BODY" and
 27 "BEACHBODY" word marks under U.S. Registration Numbers ("U.S. Reg.
 28 Nos.") 2665151, and 2862904, and design marks under U.S. Reg. Nos. 2853244,

1 and 2873866:



8 (U.S. Reg. No. 2853244)



12 (U.S. Reg. No. 2873866)

13 19. Plaintiff owns the following U.S.P.T.O. registration for the “P90X”
14 word mark under U.S. Reg. No. 3444723, and design mark under U.S. Reg. No.
15 3669400:



18 (U.S. Reg. No. 3669400)

19 20. Plaintiff owns a U.S.P.T.O. registration for the “TURBO JAM” word
20 mark under U.S. Reg. No. 3074773.

21 21. Plaintiff owns the following U.S.P.T.O. registrations for the “HIP
22 HOP ABS” word mark under U.S. Reg. No. 32879411, and design mark under U.S.
23 Reg. No. 4171732:



28 (U.S. Reg. No. 4171732)

1 22. Plaintiff owns the following U.S.P.T.O. registrations for the
2 “INSANITY” word mark under U.S. Reg. No. 3696777, and design mark under
3 U.S. Reg. No. 4049382:



8 (U.S. Reg. No. 4049382)

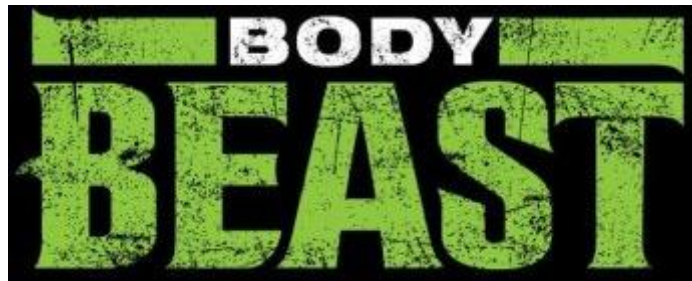
9 23. Plaintiff owns the following U.S.P.T.O. registrations for the
10 “BRAZIL BUTT LIFT” word mark under U.S. Reg. No. 3768957, and design
11 mark under U.S. Reg. No. 4093434:



17 (U.S. Reg. No. 4093434)

18 24. Plaintiff owns a U.S.P.T.O. registration for the “P90X2” word mark
19 under U.S. Reg. No. 4072035.

20 25. Plaintiff owns the following U.S.P.T.O. registrations for the “BODY
21 BEAST” word mark under U.S. Reg. No. 4230418, and design mark under U.S.
22 Reg. No. 5056988:



28 (U.S. Reg. No. 5056988)

1 26. Plaintiff owns the following U.S.P.T.O. registrations for the “FOCUS
2 T25” word mark under U.S. Reg. No. 4404411, and design mark under U.S. Reg.
3 No. 4412310:



8 (U.S. Reg. No. 4412310)

9 27. Plaintiff owns a U.S.P.T.O. registration for the “P90X3” word mark
10 under U.S. Reg. No. 4503107.

11 28. Plaintiff owns the following U.S.P.T.O. registrations for the “22
12 MINUTE HARD CORPS” word mark under U.S. Reg. No. 5014730, and design
13 mark under U.S. Reg. No. 5014724:



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19 (U.S. Reg. No. 5014724)

20 29. Plaintiff also owns several United States Copyright Registrations
21 relating to its BEACHBODY exercise kits, including its P90X Extreme Home
22 Fitness Kit under Certificate of Registration Number (“Cert. of Reg. No.”) PA 1-
23 324-687, Turbo Jam Exercise Kit under Cert. of Reg. No. PA 1-319-208, Turbo
24 Jam Kit under Cert. of Reg. No. PA 1-323-788, Hip Hob Abs (January 2007) under
25 Cert. of Reg. No. PA 1-595-631, INSANITY EXERCISE KIT under Cert. of Reg.
26 No. PA 1-689-744, BRAZIL BUTT LIFT KIT under Cert. of Reg. No. PA 1-746-
27 438, P90X2 Kit under Cert. of Reg. No. PA 1-806-513, BODY BEAST (2012)
28 under Cert. of Reg. No. PA 1-830-304, FOCUS T25 KIT under Cert. of Reg. No.

1 PA 1-935-094, and P90X3 Kit (2013) under Cert. of Reg. No. PA 1-902-813.

2 30. Plaintiff has never authorized or consented to Defendants use of the
 3 BEACHBODY®, P90X®, TURBO JAM®, HIP HOP ABS®, INSANITY®,
 4 BRAZIL BUTT LIFT®, P90X2®, BODY BEAST®, FOCUS T25®, P90X3®
 5 and/or 22 MINUTE HARD CORPS® marks or any confusingly similar marks by
 6 Defendants; nor has Plaintiff authorized Defendants to manufacture, copy, offer for
 7 sale, sell, or distribute any BEACHBODY, P90X, TURBO JAM, HIP HOP ABS,
 8 INSANITY, BRAZIL BUTT LIFT, P90X2, BODY BEAST, FOCUS T25, P90X3
 9 and/or 22 MINUTE HARD CORPS product.

10 **Defendants' Wrongful and Infringing Conduct**

11 31. Plaintiff is informed and believes that Defendants own and operate
 12 websites with the following URLs: <http://www.LNinvestmentcorporation.com> and
 13 <http://www.jadeemarketplace.com>.

14 32. Plaintiff is informed and believes that Defendants advertise for sale
 15 counterfeit BEACHBODY exercise kits and DVDs to consumers using Plaintiff's
 16 registered BEACHBODY®, P90X®, TURBO JAM®, HIP HOP ABS®,
 17 INSANITY®, BRAZIL BUTT LIFT®, P90X2®, BODY BEAST®, FOCUS
 18 T25®, P90X3® and/or 22 MINUTE HARD CORPS® trademarks and registered
 19 copyright protected material from the P90X Extreme Home Fitness Kit, Turbo Jam
 20 Exercise Kit, Turbo Jam Kit, Hip Hob Abs (January 2007), INSANITY
 21 EXERCISE KIT, BRAZIL BUTT LIFT KIT, P90X2 Kit, BODY BEAST (2012),
 22 FOCUS T25 KIT, and P90X3 Kit (2013) through
 23 www.LNinvestmentcorporation.com and www.jadeemarketplace.com.

24 33. Plaintiff is informed and believes that Defendants have sold and
 25 distributed a presently unknown quantity of counterfeit BEACHBODY exercise
 26 kits and DVDs, including but not limited to P90X®, TURBO JAM®, HIP HOP
 27 ABS®, INSANITY®, BRAZIL BUTT LIFT®, P90X2®, BODY BEAST®,
 28 FOCUS T25®, P90X3® and/or 22 MINUTE HARD CORPS® exercise kits and

DVDs, to consumers through www.LNinvestmentcorporation.com and www.jadeemarketplace.com.

34. Plaintiff is informed and believes that Defendants register and operate accounts on eBay.com to advertise, sell, and distribute counterfeit BEACHBODY exercise kits and DVDs to consumers using Plaintiff's registered BEACHBODY®, P90X®, TURBO JAM®, HIP HOP ABS®, INSANITY®, BRAZIL BUTT LIFT®, P90X2®, BODY BEAST®, FOCUS T25®, P90X3® and/or 22 MINUTE HARD CORPS® trademarks and registered copyright protected material from the P90X Extreme Home Fitness Kit, Turbo Jam Exercise Kit, Turbo Jam Kit, Hip Hob Abs (January 2007), INSANITY EXERCISE KIT, BRAZIL BUTT LIFT KIT, P90X2 Kit, BODY BEAST (2012), FOCUS T25 KIT, and P90X3 Kit (2013).

35. Plaintiff is informed and believes that Defendants facilitate the processing of payments received for counterfeit BEACHBODY exercise kits and DVDs advertised for sale, sold, and distributed to consumers through eBay by registering and using the payment processing services of PayPal.

36. Plaintiff is informed and believes that Defendants also fraudulently register and operate accounts on eBay.com using personal identification information belonging to third-parties, without any third-party consent, to advertise, sell, and distribute counterfeit BEACHBODY exercise kits and DVDs to consumers using Plaintiff's registered BEACHBODY®, P90X®, TURBO JAM®, HIP HOP ABS®, INSANITY®, BRAZIL BUTT LIFT®, P90X2®, BODY BEAST®, FOCUS T25®, P90X3® and/or 22 MINUTE HARD CORPS® trademarks and registered copyright protected material from the P90X Extreme Home Fitness Kit, Turbo Jam Exercise Kit, Turbo Jam Kit, Hip Hob Abs (January 2007), INSANITY EXERCISE KIT, BRAZIL BUTT LIFT KIT, P90X2 Kit, BODY BEAST (2012), FOCUS T25 KIT, and P90X3 Kit (2013).

37. Plaintiff is informed and believes that Defendants facilitate the processing of payments received for counterfeit BEACHBODY exercise kits and

DVDs advertised for sale, sold, and distributed to consumers through eBay accounts registered by Defendants using personal identification information belonging to third-parties, without any third-party consent, by registering and using the payment processing services of PayPal using the same third-party personal identification information.

38. Plaintiff is informed and believes that Defendants register and operate accounts on Bonanza.com to advertise, sell, and distribute counterfeit BEACHBODY exercise kits and DVDs to consumers using Plaintiff's registered BEACHBODY®, P90X®, TURBO JAM®, HIP HOP ABS®, INSANITY®, BRAZIL BUTT LIFT®, P90X2®, BODY BEAST®, FOCUS T25®, P90X3® and/or 22 MINUTE HARD CORPS® trademarks and registered copyright protected material from the P90X Extreme Home Fitness Kit, Turbo Jam Exercise Kit, Turbo Jam Kit, Hip Hob Abs (January 2007), INSANITY EXERCISE KIT, BRAZIL BUTT LIFT KIT, P90X2 Kit, BODY BEAST (2012), FOCUS T25 KIT, and P90X3 Kit (2013).

39. Plaintiff is informed and believes that Defendants have sold and distributed a presently unknown quantity of counterfeit BEACHBODY exercise kits and DVDs to consumers through eBay and Bonanza.

40. On October 3, 2016, Plaintiff authorized the purchase of a purported "Focus-T25-Gamma-4-DVD-Workout Set Brand New (Item # 112155535247)" as advertised for sale by Defendant KAYO CLEVELAND on eBay under seller ID "dalwheele-1" for a cost of \$19.99 charged to a PayPal electronic payment account. A true and correct copy of the PayPal Transaction Details evidencing this transaction is attached as **Exhibit A**.

41. On February 14, 2017, Plaintiff authorized the purchase of a purported "Focus-T25-Gamma-4-DVD-Workout BRAND NEW (Item # 12235582831)" as advertised for sale by Defendants JADEE INVESTMENTS CORPORATION and WILLIAM LEE on eBay under seller ID "jadeeinvestcorp" for a cost of \$20.49

1 charged to a PayPal electronic payment account. A true and correct copy of the
2 PayPal Transaction Details evidencing this transaction is attached as **Exhibit B**.

3 42. Plaintiff also authorized the purchase of several other purported
4 FOCUS T25, 22 MINUTE HARD CORPS, TURBO JAM, BODY BEAST, and
5 P90X exercise kits and DVDs as advertised for sale by Defendants on eBay under
6 seller IDs “daldillo-85,” “nanchowlan0,” “lulweb-5,” “kb1485286_9,”
7 “kamya7733-9,” “takishdavi-0,” “tm23646-7,” “donalriden-0,” “ernsschr-0,”
8 “woodroccumming-0,” and “planehoborich-6,” among others.

9 43. All purported BEACHBODY-branded FOCUS T25, 22 MINUTE
10 HARD CORPS, TURBO JAM, BODY BEAST, and P90X exercise kits and DVDs
11 purchased and received from Defendants were inspected to determine authenticity.
12 Plaintiff’s inspection of the items purchased and received confirmed that the items
13 advertised for sale, sold, and distributed by Defendants were, in fact, counterfeit
14 BEACHBODY-branded FOCUS T25, 22 MINUTE HARD CORPS, TURBO
15 JAM, BODY BEAST, and P90X exercise kits and DVDs.

16 44. All purported BEACHBODY-branded FOCUS T25, 22 MINUTE
17 HARD CORPS, TURBO JAM, BODY BEAST, and P90X exercise kits and DVDs
18 purchased and received from Defendants were shipped from Anniston, Alabama
19 irrespective of the name and location provided on each package as the return
20 address for each product.

21 45. Several of the BEACHBODY-branded exercise kits and DVDs
22 purchased and received from Defendants were shipped with a Jadee Marketplace
23 business card. A true and correct copy of the Jadee Marketplace business card is
24 attached as **Exhibit C**.

25 46. By these advertisements, sales and distributions, Defendants violate
26 Plaintiff’s exclusive rights in its copyrighted material, and use images and marks
27 that are confusingly similar to, identical to, and/or constitute counterfeit
28 reproductions of Plaintiff’s trademarks to confuse consumers and aid in the

1 promotion and sales of its unauthorized product.

2 47. Defendants' actions began long after Plaintiff's adoption and use of its
3 BEACHBODY®, P90X®, TURBO JAM®, HIP HOP ABS®, INSANITY®,
4 BRAZIL BUTT LIFT®, P90X2®, BODY BEAST®, FOCUS T25®, P90X3®
5 and/or 22 MINUTE HARD CORPS® trademarks, after Plaintiff obtained the
6 copyright and trademark registrations alleged above, and after Plaintiff's marks
7 became famous.

8 48. Defendants' infringing actions were committed knowingly and
9 willfully, in bad faith, and with the intent to dilute Plaintiff's trademarks, and to
10 cause confusion and mistake, and to deceive the consuming public and the public
11 at large as to the source, sponsorship and/or affiliation of Defendants, and/or
12 Defendants' counterfeit and unauthorized goods. By their wrongful conduct,
13 Defendants have traded upon and diminished Plaintiff's goodwill.

14 49. In committing these acts, Defendants have, among other things,
15 knowingly, willfully and in bad faith committed the following, all of which have
16 and will continue to cause irreparable harm to Plaintiff: (i) infringed and diluted
17 Plaintiff's rights in the BEACHBODY, P90X, TURBO JAM, HIP HOP ABS,
18 INSANITY, BRAZIL BUTT LIFT, P90X2, BODY BEAST, FOCUS T25, P90X3
19 and 22 MINUTE HARD CORPS marks; (ii) infringed Plaintiff's copyrights; (iii)
20 applied counterfeit marks; (iv) misled the public into believing there is an
21 association or connection between Defendants and Plaintiff and/or the products
22 advertised and sold by Defendants and Plaintiff; (v) used false designations of
23 origin on or in connection with its goods and services; (vi) committed unfair
24 competition; and (vii) unfairly profited from such activity. Unless enjoined,
25 Defendants will continue to cause irreparable harm to Plaintiff.

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FIRST CAUSE OF ACTION

**(Trademark Infringement against Defendants Jadee Investments Corporation,
William Lee, Kayo Cleveland, and Does 1-10, Inclusive)**

[15 U.S.C. §1114/Lanham Act §32(a)]

50. Plaintiff repeats and re-alleges every allegation set forth in Paragraphs 1-49.

51. Plaintiff has continuously used its BEACHBODY®, P90X®, TURBO JAM®, HIP HOP ABS®, INSANITY®, BRAZIL BUTT LIFT®, P90X2®, BODY BEAST®, FOCUS T25®, P90X3® and 22 MINUTE HARD CORPS® marks in interstate commerce since their introduction in 1999, 2003, 2005, 2007, 2009, 2011, 2012, 2013 and 2016, respectively.

52. Plaintiff, as the owner of all right, title and interest in and to the BEACHBODY, P90X, TURBO JAM, HIP HOP ABS, INSANITY, BRAZIL BUTT LIFT, P90X2, BODY BEAST, FOCUS T25, P90X3 and 22 MINUTE HARD CORPS marks, has standing to maintain an action for trademark infringement under the Trademark Statute 15 U.S.C. §1114.

53. Defendants are and at the time of their actions complained of herein were actually aware that Plaintiff is the registered trademark holder of the BEACHBODY, P90X, TURBO JAM, HIP HOP ABS, INSANITY, BRAZIL BUTT LIFT, P90X2, BODY BEAST, FOCUS T25, P90X3 and 22 MINUTE HARD CORPS marks identified within this Complaint.

54. Defendants did not and failed to obtain the consent or authorization of Plaintiff as the registered owner of the marks to deal in and commercially distribute, market and sell P90X, TURBO JAM, HIP HOP ABS, INSANITY, BRAZIL BUTT LIFT, P90X2, BODY BEAST, FOCUS T25, P90X3 and 22 MINUTE HARD CORPS fitness DVDs and kits bearing Plaintiff's BEACHBODY, P90X, TURBO JAM, HIP HOP ABS, INSANITY, BRAZIL BUTT LIFT, P90X2, BODY BEAST, FOCUS T25, P90X3 and 22 MINUTE HARD CORPS marks into

1 the stream of commerce.

2 55. Defendants intentionally and knowingly used in commerce the
3 reproductions, counterfeits, copies, and/ or colorable imitations of Plaintiff's
4 registered marks in connection with the sale, offering for sale, distribution, or
5 advertising of Defendant's goods by offering, advertising, promoting, retailing,
6 selling, and distributing counterfeit P90X, TURBO JAM, HIP HOP ABS,
7 INSANITY, BRAZIL BUTT LIFT, P90X2, BODY BEAST, FOCUS T25, P90X3
8 and 22 MINUTE HARD CORPS fitness DVDs and kits bearing the
9 BEACHBODY, P90X, TURBO JAM, HIP HOP ABS, INSANITY, BRAZIL
10 BUTT LIFT, P90X2, BODY BEAST, FOCUS T25, P90X3 and 22 MINUTE
11 HARD CORPS marks.

12 56. Defendants reproduced, counterfeited, copied, and colorably imitated
13 Plaintiff's registered BEACHBODY, P90X, TURBO JAM, HIP HOP ABS,
14 INSANITY, BRAZIL BUTT LIFT, P90X2, BODY BEAST, FOCUS T25, P90X3
15 and 22 MINUTE HARD CORPS marks and applied such reproductions,
16 counterfeits, copies, or colorable imitations to labels, signs, prints, packages,
17 wrappers, receptacles and/or advertisements intended to be used in commerce upon
18 or in connection with the sale, offering for sale, distribution, and/or advertising of
19 goods. Defendants thereupon offered, advertised, promoted, retailed, sold, and
20 distributed counterfeit P90X, TURBO JAM, HIP HOP ABS, INSANITY, BRAZIL
21 BUTT LIFT, P90X2, BODY BEAST, FOCUS T25, P90X3 and 22 MINUTE
22 HARD CORPS fitness DVDs and kits bearing the BEACHBODY, P90X, TURBO
23 JAM, HIP HOP ABS, INSANITY, BRAZIL BUTT LIFT, P90X2, BODY BEAST,
24 FOCUS T25, P90X3 and 22 MINUTE HARD CORPS marks.

25 57. Defendants' egregious and intentional use and sale of fake, pirated
26 and counterfeit items bearing Plaintiff's trademarks is likely to cause confusion, or
27 to cause mistake, or to deceive, mislead, betray, and defraud consumers who
28 believe that Defendants' items are authentic products manufactured by Plaintiff.

58. Defendants' acts have been committed with knowledge of Plaintiff's exclusive rights and goodwill in the marks, as well as with bad faith and the intent to cause confusion or to cause mistake and to deceive.

59. Plaintiff has suffered and will continue to suffer substantial and irreparable injury, loss and damage to its rights in and to the BEACHBODY, P90X, TURBO JAM, HIP HOP ABS, INSANITY, BRAZIL BUTT LIFT, P90X2, BODY BEAST, FOCUS T25, P90X3 and 22 MINUTE HARD CORPS marks and the goodwill associated therewith, for which it has no adequate remedy at law; thus Plaintiff requests injunctive relief.

60. Defendants' continued and knowing use of Plaintiff's marks without Plaintiff's consent or authorization constitutes intentional infringement of Plaintiff's federally registered trademarks in violation of Section 32 of the *Lanham Act*, 15 U.S.C. §1114. Based on such conduct, Plaintiff is entitled to injunctive relief as well as monetary damages, and other remedies provided by section 1116, 1117, and 1118, including Defendants' profits, treble damages, reasonable attorneys' fees, costs and prejudgment interest.

SECOND CAUSE OF ACTION

**(Copyright Infringement against Defendants Jadee Investments Corporation,
William Lee, Kayo Cleveland, and Does 1-10, Inclusive)**

[17 U.S.C. §501(a)]

61. Plaintiff repeats and re-alleges every allegation set forth in Paragraphs 1-60.

62. Plaintiff is the exclusive owner of copyrights in and related to its BEACHBODY-branded P90X Extreme Home Fitness Kit, Turbo Jam Exercise Kit, Turbo Jam Kit, Hip Hob Abs (January 2007), INSANITY EXERCISE KIT, BRAZIL BUTT LIFT KIT, P90X2 Kit, BODY BEAST (2012), FOCUS T25 KIT, and P90X3 Kit (2013) under Certificate of Registration Numbers PA 1-324-687, PA 1-319-208, PA 1-323-788, PA 1-595-631, PA 1-689-744, PA 1-746-438, PA 1-

1 806-513, PA 1-830-304, PA 1-935-094, and PA 1-902-813.

2 63. Defendants did not seek and failed to obtain Plaintiff's consent or
3 authorization to import, utilize, manufacture, reproduce, copy, display, prepare
4 derivative works, distribute, sell, transfer, rent, perform, and/or market Plaintiff's
5 copyright-protected materials.

6 64. Without permission, Defendants intentionally and knowingly
7 imported, reproduced, counterfeited, copied, displayed, and/or manufactured
8 Plaintiff's protected works by offering, advertising, promoting, retailing, selling,
9 and distributing counterfeit P90X, TURBO JAM, HIP HOP ABS, INSANITY,
10 BRAZIL BUTT LIFT, P90X2, BODY BEAST, FOCUS T25, P90X3 and 22
11 MINUTE HARD CORPS fitness DVDs and kits which are at a minimum
12 substantially similar to Plaintiff's copyright protected works.

13 65. Defendants' acts as alleged herein, constitute infringement of
14 Plaintiff's copyright, including Plaintiff's exclusive rights to reproduce, distribute
15 and/or sell such protected material.

16 66. Defendants' knowing and intentional copyright infringement as
17 alleged herein has caused and will continue to cause substantial and irreparable
18 harm to Plaintiff and has and will continue to cause damage to Plaintiff. Plaintiff
19 is therefore entitled to injunctive relief, damages, Defendants' profits, increased
20 damages, and reasonable attorney's fees and costs.

21 **THIRD CAUSE OF ACTION**

22 **(False Designation of Origin & Unfair Competition against Defendants Jadee**
23 **Investments Corporation, William Lee, Kayo Cleveland, and Does 1-10,**
24 **Inclusive)**

25 **[15 U.S.C. §1125(a)/Lanham Act §43(a)]**

26 67. Plaintiff repeats and re-alleges every allegation set forth in Paragraphs
27 1-66.

28 ///

68. Plaintiff, as the owner of all common law right, title, and interest in and to the BEACHBODY, P90X, TURBO JAM, HIP HOP ABS, INSANITY, BRAZIL BUTT LIFT, P90X2, BODY BEAST, FOCUS T25, P90X3 and 22 MINUTE HARD CORPS marks, has standing to maintain an action for false designation of origin and unfair competition under the Federal Trademark Statute, Lanham Act section 43(a) (15 U.S.C. §1125). Plaintiff's BEACHBODY, P90X, TURBO JAM, HIP HOP ABS, INSANITY, BRAZIL BUTT LIFT, P90X2, BODY BEAST, FOCUS T25, P90X3 and 22 MINUTE HARD CORPS marks are inherently distinctive and/or have acquired distinctiveness.

69. Defendants have without authorization, on or in connection with its goods and services, used in commerce marks that are confusingly similar to the BEACHBODY, P90X, TURBO JAM, HIP HOP ABS, INSANITY, BRAZIL BUTT LIFT, P90X2, BODY BEAST, FOCUS T25, P90X3 and 22 MINUTE HARD CORPS marks, and/or have made false designations of origin which are likely to cause confusion or cause mistake or to deceive as to the affiliation, connection or association of Defendants with Plaintiff, and/or as to the origin, sponsorship or approval of Defendants' goods or services or commercial activities.

70. Defendants' conduct described above violates the Lanham Act, and Defendants have unfairly competed with and injured and, unless immediately restrained, will continue to injure Plaintiff, causing damage to Plaintiff in an amount to be determined at trial, and will cause irreparable injury to Plaintiff's goodwill and reputation associated with the value of Plaintiff's BEACHBODY, P90X, TURBO JAM, HIP HOP ABS, INSANITY, BRAZIL BUTT LIFT, P90X2, BODY BEAST, FOCUS T25, P90X3 and 22 MINUTE HARD CORPS marks.

71. On information and belief, the conduct of Defendants has been knowing, deliberate, willful, intended to cause confusion, or to cause mistake or to deceive and in blatant disregard of Plaintiff's rights.

///

1 72. Defendants knew or by the exercise of reasonable care should have
2 known that their adoption and commencement of use in commerce and continuing
3 use of marks that are confusingly similar to and constitute a counterfeit
4 reproduction of Plaintiff's marks would cause confusion, mistake, or deception
5 among purchasers, users and the public.

6 73. Defendants' egregious and intentional use and sale of fake, pirated
7 and counterfeit items bearing Plaintiff's trademarks unfairly competes with
8 Plaintiff and is likely to cause confusion, mistake, or to deceive, mislead, betray,
9 and defraud consumers to believe that the substandard imitations are genuine P90X,
10 TURBO JAM, HIP HOP ABS, INSANITY, BRAZIL BUTT LIFT, P90X2, BODY
11 BEAST, FOCUS T25, P90X3 and 22 MINUTE HARD CORPS DVDs or kits.

12 74. Defendants' continuing and knowing use of Plaintiff's mark
13 constitutes false designation of origin and unfair competition in violation of
14 Section 43(a) of the Lanham Act, 15 U.S.C. §1125(a), causing Plaintiff to suffer
15 substantial and irreparable injury for which it has no adequate remedy at law.

16 75. Defendants' wrongful conduct has permitted or will permit it to make
17 substantial sales and profits on the strength of Plaintiff's marketing, advertising,
18 sales and consumer recognition. As a direct and proximate result of Defendants'
19 wrongful conduct, as alleged herein, Plaintiff has been and will be deprived of
20 sales of its P90X, TURBO JAM, HIP HOP ABS, INSANITY, BRAZIL BUTT
21 LIFT, P90X2, BODY BEAST, FOCUS T25, P90X3 and 22 MINUTE HARD
22 CORPS products in an amount as yet unknown but to be determined at trial, and
23 has been deprived and will be deprived of the value of its marks as commercial
24 assets in an amount as yet unknown but to be determined at trial. Plaintiff seeks an
25 accounting of Defendants' profits, and requests that the Court grant Plaintiff three
26 times that amount in the Court's discretion.

27 76. Based on Defendants' wrongful conduct, Plaintiff is entitled to
28 injunctive relief as well as monetary damages, and other remedies as provided by

the Lanham Act, including Defendants' profits, treble damages, reasonable attorneys' fees, costs and prejudgment interest.

FOURTH CAUSE OF ACTION

(Dilution against Defendants Jadee Investments Corporation, William Lee, Kayo Cleveland, and Does 1-10, Inclusive)

[15 U.S.C. §1125(c)]

77. Plaintiff repeats and re-alleges every allegation set forth in Paragraphs 1-76.

78. Plaintiff's BEACHBODY®, P90X®, TURBO JAM®, HIP HOP ABS®, INSANITY®, BRAZIL BUTT LIFT®, P90X2®, BODY BEAST®, FOCUS T25®, P90X3® and 22 MINUTE HARD CORPS® marks are distinctive and famous within the meaning of the Lanham Act.

79. Upon information and belief, Defendants' unlawful actions began long after Plaintiff's mark became famous, and Defendants acted knowingly, deliberately and willfully with the intent to trade on Plaintiff's reputation and to dilute Plaintiff's mark. Defendants' conduct is willful, wanton and egregious.

80. Defendants' intentional sale of fake, pirated and counterfeit items bearing Plaintiff's marks is likely to cause confusion, mistake, or to deceive, mislead, betray, and defraud consumers to believe that the substandard imitations are genuine P90X, TURBO JAM, HIP HOP ABS, INSANITY, BRAZIL BUTT LIFT, P90X2, BODY BEAST, FOCUS T25, P90X3 and 22 MINUTE HARD CORPS kits and DVDs. The actions of Defendants complained of herein have diluted and will continue to dilute Plaintiff's marks, and are likely to impair the distinctiveness, strength and value of Plaintiff's marks, and injure the business reputation of Plaintiff and its marks.

81. Defendants' acts have caused and will continue to cause Plaintiff irreparable harm. Plaintiff has no adequate remedy at law to compensate it fully for the damages that have been caused and which will continue to be caused by

1 Defendants' unlawful acts, unless they are enjoined by this Court.

2 82. As the acts alleged herein constitute a willful violation of section
3 43(c) of the Lanham Act, 15 U.S.C. section 1125(c), Plaintiff is entitled to
4 injunctive relief as well as monetary damages and other remedies provided by 15
5 U.S.C. §§1116, 1117, 1118, and 1125(c), including Defendants' profits, treble
6 damages, reasonable attorney's fees, costs and prejudgment interest.

7 **FIFTH CAUSE OF ACTION**

8 **(Unlawful, Unfair, Fraudulent Business Practices against Defendants Jadee**
9 **Investments Corporation, William Lee, Kayo Cleveland, and Does 1-10,**
10 **Inclusive)**

11 ***[California Business & Professions Code §17200 et seq.]***

12 83. Plaintiff repeats and re-alleges every allegation set forth in Paragraphs
13 1-82.

14 84. By marketing, advertising, promoting, selling and/or otherwise
15 dealing in the counterfeit P90X, TURBO JAM, HIP HOP ABS, INSANITY,
16 BRAZIL BUTT LIFT, P90X2, BODY BEAST, FOCUS T25, P90X3 and 22
17 MINUTE HARD CORPS products, Defendants have engaged in unfair
18 competition including unlawful, unfair and fraudulent business practices in
19 violation of the California Business and Professions Code §17200 et seq.

20 85. Defendants' marketing, advertising, promoting, selling and/or
21 otherwise dealing in the counterfeit P90X, TURBO JAM, HIP HOP ABS,
22 INSANITY, BRAZIL BUTT LIFT, P90X2, BODY BEAST, FOCUS T25, P90X3
23 and 22 MINUTE HARD CORPS products is in violation and derogation of
24 Plaintiff's rights and is likely to cause confusion, mistake and deception among
25 consumers and the public as to the source, origin, sponsorship, or quality of the
26 goods of Defendant, thereby causing loss, damage and injury to Plaintiff and to the
27 purchasing public. Defendants' conduct was intended to cause such loss, damage
28 and injury.

1 86. Defendants knew or by the exercise of reasonable care should have
2 known that their marketing, advertising, promoting, selling and/or otherwise
3 dealing in and their continuing marketing, advertising, promoting, selling and/or
4 otherwise dealing in the counterfeit product would cause confusion mistake or
5 deception among purchasers, users and the public.

6 87. By marketing, advertising, promoting, selling and/or otherwise
7 dealing in and their continuing marketing, advertising, promoting, selling and/or
8 otherwise dealing in counterfeit versions of Plaintiff's marks and products,
9 Defendants intended to and did induce and intends to and will induce customers to
10 purchase its products by trading off the extensive goodwill built up by Plaintiff in
11 its marks.

12 88. Upon information and belief, the conduct of Defendants has been
13 knowing, deliberate, willful, intended to cause confusion, or to cause mistake or to
14 deceive, and in disregard of Plaintiff's rights.

15 89. Defendants' wrongful conduct, as alleged above, has permitted and
16 will permit them to make substantial sales and profits on the strength of Plaintiff's
17 nationwide marketing, advertising, sales and consumer recognition. As a direct
18 and proximate result of Defendants' wrongful conduct, as alleged herein, Plaintiff
19 has been and will be deprived of substantial sales of its products in an amount as
20 yet unknown but to be determined at trial, and has been and will be deprived of the
21 value of its trademarks as commercial assets, in an amount as yet unknown but to
22 be determined at trial. Plaintiff seeks restitution in this matter, including an order
23 granting Defendants' profits stemming from its infringing activity, and its actual
24 and/or compensatory damages.

25 90. Plaintiff has no adequate remedy at law for Defendants' continuing
26 violation of its rights set forth above. Plaintiff seeks injunctive relief.

27 91. Plaintiff further requests a court order that an asset freeze or
28 constructive trust be imposed over all monies in Defendants' possession which

1 rightfully belong to Plaintiff.

2 **PRAYER FOR RELIEF**

3 WHEREFORE, Plaintiff Beachbody, LLC, prays for judgment against
4 Defendants Jadee Investments Corporation, William Lee, Kayo Cleveland, and
5 Does 1-10, inclusive, and each of them, as follows:

- 6 A. For an award of Defendants' profits and Plaintiff's damages in an amount
7 to be proven at trial for trademark infringement under 15 U.S.C.
8 §1114(a);
- 9 B. For an award of Defendants' profits and Plaintiff's damages in an amount
10 to be proven at trial for copyright infringement under 17 U.S.C. §501(a);
- 11 C. For an award of Defendants' profits and Plaintiff's damages in an amount
12 to be proven at trial for false designation of origin and unfair competition
13 under 15 U.S.C. §1125(a);
- 14 D. For an award of Defendants' profits and Plaintiff's damages in an amount
15 to be proven at trial for trademark dilution under 15 U.S.C. §1125(c);
- 16 E. In the alternative to actual damages and Defendants' profits for the
17 infringement and counterfeiting of Plaintiff's trademarks pursuant to the
18 Lanham Act, for statutory damages pursuant to 15 U.S.C. §1117(c),
19 which election Plaintiff will make prior to the rendering of final
20 judgment;
- 21 F. In the alternative to actual damages and Defendants' profits pursuant to
22 17 U.S.C. §504(b), for statutory damages pursuant to 17 U.S.C. §504(c),
23 which election Plaintiff will make prior to the rendering of final
24 judgment;
- 25 G. For restitution in an amount to be proven at trial for unfair, fraudulent
26 and illegal business practices under *Business and Professions Code*
27 §17200;
- 28 H. For damages to be proven at trial for common law unfair competition;

- 1 I. For an injunction by this Court prohibiting Defendants from engaging or
2 continuing to engage in the unlawful, unfair, or fraudulent business acts
3 or practices described herein, including the advertising and/or dealing in
4 any counterfeit product; the unauthorized use of any mark, copyright or
5 other intellectual property right of Plaintiff; acts of trademark
6 infringement or dilution; acts of copyright infringement; false designation
7 of origin; unfair competition; and any other act in derogation of
8 Plaintiff's rights;
- 9 J. For an order from the Court requiring that Defendants provide complete
10 accountings and for equitable relief, including that Defendants disgorge
11 and return or pay their ill-gotten gains obtained from the illegal
12 transactions entered into and or pay restitution, including the amount of
13 monies that should have been paid if Defendants complied with their
14 legal obligations, or as equity requires;
- 15 K. For an order from the Court that an asset freeze or constructive trust be
16 imposed over all monies and profits in Defendants' possession which
17 rightfully belong to Plaintiff;
- 18 L. For destruction of the infringing articles in Defendants' possession under
19 15 U.S.C. §1118 and 17 U.S.C. §503;
- 20 M. For treble damages suffered by Plaintiff as a result of the willful and
21 intentional infringements and acts of counterfeiting engaged in by
22 Defendants, under 15 U.S.C. §1117(b);
- 23 N. For damages in an amount to be proven at trial for unjust enrichment;
- 24 O. For an award of exemplary or punitive damages in an amount to be
25 determined by the Court;
- 26 P. For Plaintiff's reasonable attorney's fees;
- 27 Q. For all costs of suit; and
- 28 R. For such other and further relief as the Court may deem just and

1 equitable.

2
3 DATED: March 15, 2017

JOHNSON & PHAM, LLP

4
5 By: /s/ Marcus F. Chaney
6 Marcus F. Chaney, Esq.
7 Attorneys for Plaintiff
8 BEACHBODY, LLC
9
10
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12 **DEMAND FOR JURY TRIAL**

13 Plaintiff Beachbody, LLC, respectfully demands a trial by jury in this action
14 pursuant to Local Rule 38-1.

15 DATED: March 15, 2017

JOHNSON & PHAM, LLP

16
17 By: /s/ Marcus F. Chaney
18 Marcus F. Chaney, Esq.
19 Attorneys for Plaintiff
20 BEACHBODY, LLC
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